

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
 A. VENTURA,) OTA No. 20086475
)
 Appellant.)
)

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Wednesday, March 15, 2023

Reported by:

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CSR No. 10420

Job No. :
41027 OTA(A)

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TRANSCRIPT OF PROCEEDINGS, taken at
12900 Park Plaza Drive, Suite 300, Cerritos,
California, commencing at 9:30 a.m. and
adjourning at 10:32 a.m. on Wednesday,
March 15, 2023, reported by MARCENA M. MUNGUIA,
CSR No. 10420, a Certified Shorthand Reporter
in and for the State of California.

1 APPEARANCES:

2
3 Panel Lead: ALJ ANDREW WONG

4
5 Panel Members: ALJ JOSHUA ALDRICH
6 ALJ LAUREN KATAGIHARA

7
8 For the Appellant: RAUL CARREGA

9
10 For the Respondent: DEPARTMENT OF TAX AND
11 FEE ADMINISTRATION:
12 RANDY SUAZO
13 Hearing Representative

14 CARY HUXSOLL
15 Tax Counsel

16 JASON PARKER
17 Hearing Representative
18
19
20
21
22
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24
25

I N D E X

E X H I B I T S

(Appellant's Exhibits 1-20 were received at page 7)

(Respondent's Exhibits A-F were received at page 7)

P R E S E N T A T I O N

P A G E

By Mr. Carrega 8

By Mr. Suazo 33

C L O S I N G S T A T E M E N T

By Mr. Carrega 41

1 Cerritos, California, Wednesday, March 15, 2023

2 9:30 a.m.

3
4
5 JUDGE WONG: All right. We're opening the record.

6 This is the Appeal of Ventura for the Office of
7 Tax Appeals, OTA Case Number 20086475. Today is
8 Wednesday, March 15th, 2023, and the time is 9:34 a.m.
9 We are holding this hearing in person in Cerritos,
10 California.

11 I am lead Administrative Law Judge Andrew Wong,
12 and with me today are Judges Lauren Katagihara and Josh
13 Aldrich. We are the panel hearing and deciding this
14 case.

15 Individuals representing the Appellant taxpayer,
16 please identify yourselves.

17 MR. CARREGA: The name is Raul Carrega.

18 JUDGE WONG: Could you speak into the mic. I didn't
19 quite hear you. You have to press the button --

20 MR. CARREGA: Raul Carrega.

21 JUDGE WONG: -- that says push.

22 MR. CARREGA: Okay. I've got it. The name's
23 Raul Carrega.

24 JUDGE WONG: Okay. Thank you, Mr. Carrega.

25 Individuals representing the Respondent tax

1 agency, CDTFA, please identify yourselves.

2 MR. SUAZO: Randy Suazo, Hearing Representative,
3 DTFA.

4 MR. PARKER: Jason Parker, Chief of Headquarters
5 Operations Bureau with CDTFA.

6 MR. HUXSOLL: Cary Huxsoll, from CDTFA's Legal
7 Division.

8 JUDGE WONG: Thank you.

9 We are considering two issues today. The first
10 issue is whether the amount of unreported taxable sales
11 should be reduced, and the second issue is whether
12 Appellant was negligent.

13 Mr. Carrega, is that correct?

14 MR. CARREGA: That is correct.

15 JUDGE WONG: Thank you.

16 CDTFA, is that a correct statement of the two
17 issues?

18 MR. SUAZO: That's correct.

19 JUDGE WONG: Thank you. Appellant has identified --
20 we'll go over exhibits now. Appellant has identified and
21 submitted proposed Exhibits 1 through 20 as evidence.

22 Mr. Carrega, you had no other exhibits; is that
23 correct?

24 MR. CARREGA: That is correct.

25 JUDGE WONG: Okay. And CDTFA, did you have any

1 objections to those proposed exhibits?

2 MR. SUAZO: No objections.

3 JUDGE WONG: Okay. Thank you.

4 Appellant's Exhibits 1 through 20 will be
5 admitted into the record as evidence.

6 CDTFA has identified and proposed Exhibits A
7 through F as evidence, and you have no other exhibits; is
8 that correct, CDTFA?

9 MR. SUAZO: That is correct.

10 JUDGE WONG: Okay. And Mr. Carrega, did you have any
11 objections to those proposed exhibits?

12 MR. CARREGA: None.

13 JUDGE WONG: Okay. Thank you. CDTFA's Exhibits A
14 through F will be admitted into the record as evidence.

15 (Appellant's Exhibits 1 through 20 were received
16 in evidence by the Administrative Law Judge.)

17 (Respondent's Exhibits A through F were received
18 in evidence by the Administrative Law Judge.)

19 JUDGE WONG: And we'll go over witnesses next.

20 Mr. Carrega, you have no witnesses; is that
21 correct?

22 MR. CARREGA: That is correct.

23 JUDGE WONG: And CDTFA, you also have no witnesses;
24 is that correct?

25 MR. SUAZO: That is correct.

1 JUDGE WONG: Okay. It was anticipated that oral
2 hearing would take approximately 70 minutes, 7-0, as
3 follows: Appellant's presentation would be 25 minutes
4 and then CDTFA will have 20 minutes, and then Appellant
5 will have the final word, the rebuttal and closing
6 remarks, which will be 10 minutes. And then the ALJ
7 questions and these introductions and whatnot would take
8 about 15 minutes. So that's about 70 minutes.

9 And then we're about to -- we're about to
10 proceed with the Appellant's presentation.

11 Mr. Carrega, do you have any questions before
12 proceeding?

13 MR. CARREGA: I don't.

14 JUDGE WONG: CDTFA, did you have any questions?

15 MR. SUAZO: No questions.

16 JUDGE WONG: Okay. Judge Aldrich, any questions?
17 Anything?

18 JUDGE ALDRICH: No questions, thank you.

19 JUDGE WONG: Judge Katagihara?

20 JUDGE KATAGIHARA: No questions.

21 JUDGE WONG: Okay. Mr. Carrega, please proceed with
22 your presentation. You have 25 minutes.

23 MR. CARREGA: Thank you.

24 I'd like to first start off and talk about -- a
25 little bit about the business. Rolling Tires, it's a

1 tire business, the small business located in Bellflower.
2 They sell tires, but besides selling tires, they also fix
3 tires and do installations and many things that are
4 related to the tire. The bulk of their business is
5 mainly patching tires and fixing tires. That's their
6 model. They sell tires at a very low price. It's very
7 competitive. This is a very competitive industry, so
8 their pricing model tends to be very close to cost and
9 they make their money through patching, installation and
10 mainly more labor intensified. So that's the -- that's the
11 first thing about it.

12 I'd like to first start off and maybe, if you
13 have -- I don't know if you have that in front of you,
14 but I can speak on some of the schedules that were
15 prepared during the audit that we found disturbing.

16 I'd like to first start off with the Schedule
17 Number 2. If you -- if you're following along, it's on
18 the PowerPoint presentation. You would hit outline view
19 and then -- you would first hit view and then you'd hit
20 outline view and it gives you the numbers of the
21 schedules that I presented.

22 If you don't have that, I have a hard copy, but
23 it's very difficult to read.

24 I want to start off with the -- what exactly is
25 a shelf test? This whole audit is basically a shelf test

1 or that is the main thing of what's generating their
2 proposed tax that my client -- that they're saying my
3 client owes the State. And the way the shelf test works
4 is they -- you find out what a product -- I'm sorry.

5 JUDGE WONG: Mr. Carrega, do you have the actual
6 schedule number you're referring to?

7 MR. CARREGA: Yes. It's Schedule 2.

8 JUDGE WONG: Schedule 2. Do you know where it is in
9 the exhibits?

10 MR. CARREGA: It's -- it would be Exhibit Number 2.

11 JUDGE WONG: Exhibit Number 2. Okay. Got it.

12 MR. CARREGA: So if we hit Number 2, and --

13 JUDGE WONG: Okay. It's your Appellant's Exhibit
14 Number 2. Got it. Thank you.

15 MR. CARREGA: So the shelf test, the way it works is
16 you buy a tire -- I'll give you an example.

17 You buy a tire or a tire costs you a dollar and
18 perhaps you sell it for a \$1.10. So you would have
19 basically like 10 percent or whatever the difference
20 between what you sell it for and what your cost is.

21 So if you -- the higher the percentage, so if I
22 would sell it for \$2, then the shelf test would be a
23 higher percentage and they would calculate their tax
24 based on that shelf test, as they call it. It's like a
25 gross profit. So they're sort of making attacks based on

1 the shelf test.

2 And so how that shelf test is comprised of I
3 think is very important because that is what this whole
4 meeting is about, the shelf test, and they're making the
5 claim that this shelf test is 90 percent or whatever it
6 is. So I wanted to talk a little bit about the shelf
7 test.

8 As we move on as to what the shelf test is and
9 how it's generated is basically it takes the difference
10 between the sales price and the cost. So those are the
11 two main -- two important elements that we need to look
12 at to determine -- or they have developed the shelf test
13 to determine what the tax is owed.

14 So I just wanted to just talk about the shelf
15 test and now that I think we have a little understanding
16 of how it works, I want to proceed to the next schedule.

17 I'm going to the Schedule 3, which shows exactly
18 the auditor's work paper as to how she came up with the
19 shelf test. The auditor, the field auditor, we gave them
20 all the records, all the sales invoices that they
21 requested for the period, and they had them. They made
22 copies and did everything. There were many work papers
23 that this auditor did, but one of the ones that I'm
24 looking at is this number 3, which she took -- out of all
25 these sales invoices, she picked out six and one of my

1 concerns was, "Only six?" And then not only did she pick
2 out six invoices, she altered the invoices so that she
3 can touch -- so she can compare a certain tire with that
4 invoice, which would create a higher gross profit or
5 shelf test.

6 For example, the invoices show, okay, there's a
7 tire that's, you know -- that the size is let's just say
8 50 and the make could be Goodrich. It could be Michelin,
9 it could be anything it wants, depending on what you
10 sell. Well, this field auditor decided, well, I'm going
11 to get this invoice and I'm just going to say it's
12 Michelin or it's this high-priced tire without
13 necessarily matching the price or the product with the
14 proper cost.

15 So, in effect, what she did is altered what I
16 say is the invoice because, you know, the tire is not --
17 it doesn't match. So if you have a tire that's, let's
18 say, a high-quality tire as Michelin, it would be a
19 different price than, say, an import tire and would be a
20 great difference. But what this field auditor decided to
21 do, and she says it in her work papers, she couldn't
22 match it. She couldn't basically match which prod- --
23 which type of tire it was. She just said, No, it's going
24 to be this one. And there's no basis for that.

25 So what she did here is actually altered the

1 invoice and presented as this is a true record because
2 she could not find it or whatever reason she has in her
3 work paper here. But that's just one of the things that
4 she did to create a very high gross profit.

5 She didn't mention anything about statistical
6 sampling. I mean, if you have a thousand invoices and
7 you only pick six and then you come up -- and not only
8 did she pick six, but she actually hand-picked those
9 invoices and then altered them to create a very high
10 gross markup.

11 If we look at what the markups, she came up with
12 was almost 100 percent, which was -- which everyone down
13 the road said was unacceptable and everyone agreed to
14 that, No, this is not correct. So that is one of the
15 things I wanted to talk about.

16 There's a Schedule 4 and it sort of shows the
17 difference in tax. If you don't mind, I'm going to use
18 my paper copy here.

19 And what the Schedule 4 is it basically talks
20 about the difference in tax and that's what schedule
21 does. It's just basically differences in tax, but the
22 main thing is that her gross profit was almost 100
23 percent.

24 If we go to Schedule 5 and 6, I wanted to show
25 just how many sales invoices were examined, and the

1 purpose of that schedule is to show all the invoices that
2 the field auditor had, and had opportunity to look at;
3 and from all these sales invoices, she only picked six,
4 besides altering them.

5 There's much -- so these are all the sales
6 invoices that are -- that were included and given to the
7 auditor.

8 When we look at Schedule 7, this is basically
9 labor and putting the tires on cars. You know, there's
10 balancing, valve stems, patching work and all sorts of
11 other things besides just the tire.

12 As I go to Schedule 8, this talks about the
13 gross sales and they're claiming it's higher than the
14 bank, what's been shown in the bank. But, you know, here
15 it is.

16 JUDGE WONG: Mr. Carrega, in your exhibits, which --
17 which document are you -- which exhibit are you referring
18 to?

19 MR. CARREGA: I'm referring to just the -- right now,
20 I think I'm referring -- I'm referring to 8. I was just
21 referring to 8, but I'm going to Exhibit 9.

22 JUDGE WONG: So Exhibit 8 is talking about a taxable
23 book markup calculation. It's Schedule 12(f). Is that
24 what you were --

25 MR. CARREGA: Let me put it on zoom so I can see

1 this.

2 JUDGE WONG: We're having a little bit hard time
3 tracking your references because the PowerPoint pages
4 don't correspond to the exhibit pages and the PowerPoint
5 you provided, the -- it's a little small, so it's hard
6 for us --

7 MR. CARREGA: Yes. Yes. I understand.

8 JUDGE WONG: -- to read. So if you could refer to
9 maybe the exhibits that you provided, those are easier
10 for us to read and track what your argument is.

11 MR. CARREGA: Okay. Let me -- let me go to
12 Exhibit 9, and I'm going to -- Exhibit 9, which would be
13 Number 9, and I'm going to zoom in this.

14 JUDGE WONG: So Exhibit 9 is Schedule 12(g). It's
15 federal income tax returns; is that correct?

16 MR. CARREGA: 12(e). I'm looking at 12(e), Markup
17 Calculation for 10(1)(Q) based on the recorded taxable
18 sales and the purchase provided for the Bellflower
19 location.

20 JUDGE WONG: Okay. That is your Exhibit 7.

21 MR. CARREGA: Okay. I've got here 9, so I guess
22 maybe we're off two as to what you have. Is that fair to
23 say?

24 JUDGE WONG: It -- it may be, 'cause you provided
25 your exhibits --

1 MR. CARREGA: Yes.

2 JUDGE WONG: -- and then afterwards you provided a
3 PowerPoint.

4 MR. CARREGA: Yes. The PowerPoint is the one I'm
5 referring to.

6 JUDGE WONG: Right, but for us, the PowerPoint, it's
7 hard to read the documents. It might be better to refer
8 to your exhibits that you provided.

9 MR. CARREGA: Okay.

10 JUDGE WONG: You provided 20 exhibits and I'm
11 assuming those are replicated in your PowerPoint --

12 MR. CARREGA: Yes.

13 JUDGE WONG: -- but your PowerPoint -- again, like I
14 said, it's a little bit hard to read.

15 MR. CARREGA: Yes.

16 JUDGE WONG: So it might be better for you to
17 reference your exhibits.

18 MR. CARREGA: Okay. I'll reference them by the
19 number that the auditor has used.

20 JUDGE WONG: Sure. And, yeah, that's fine.

21 MR. CARREGA: Is that okay?

22 JUDGE WONG: Thank you.

23 MR. CARREGA: Okay. This is my 9. I believe it
24 would be your 7. It's 12(e).

25 JUDGE WONG: Okay. These are also still your

1 exhibits though. They're not --

2 MR. CARREGA: Yes. They're still my exhibits. Just
3 it looks like we have a difference between the PowerPoint
4 and since the PowerPoint is a little bit difficult to
5 read --

6 JUDGE WONG: Yeah, and these are all your materials.

7 MR. CARREGA: And all my material up here is based on
8 the PowerPoint --

9 JUDGE WONG: Okay.

10 MR. CARREGA: -- so I apologize if I go back. But
11 everything's based on that PowerPoint here.

12 JUDGE WONG: Okay.

13 MR. CARREGA: So what I have here is 12(e) and it
14 talks about the purchases and the claims there, you know,
15 they're claiming that their missing purchases and one of
16 the things I want to mention is there are many schedules
17 here that the auditor prepared and one was, you know, a
18 break-even.

19 There was other schedules, but they always just
20 went back to the shelf test, the shelf test and they
21 don't address other things on their schedules, like a
22 company that's on a cash basis versus accrual basis.
23 There would be a much difference and if you're trying to
24 do a shelf test properly, you know, you have to do
25 timing. You have to take into account many other things.

1 You know, there's inventory. There's shrinkage. There's
2 other things, and the field auditor just did not even --
3 just ignored there and just said, you know, This can't be
4 right. It's -- we've got to do other testing and they go
5 back to the shelf test and, you know, come up with the
6 gross profit.

7 I want to go to the next schedule, which would
8 be my 10. I believe it would be your 8 and it talks
9 about the taxable book markup calculation and I just
10 wanted to show the -- how this markup calculation and
11 what they did here.

12 This would be schedule 12(f) and all it is is
13 the markup calculation, and the markup calculation, like
14 I said, talks about, you know, cost of goods sold,
15 reportable taxable sales, and gross profit.

16 I'm going to skip to another exhibit, Exhibit
17 Number 12, which I believe would be your 10, and this is
18 what was reported. This talks about what she received
19 and all the different quarters that my client used and
20 reported and it just shows that, hey, there are records.

21 One of the points I want to make here as I go
22 through all these schedules is the auditor did examine
23 our books and records. Our books and records were
24 examined and we have schedules that show that our books
25 and records were examined. So that is one of the main

1 keys I want to show. And the auditor actually did work
2 to examine those records, but she doesn't use these
3 records for her conclusion or doesn't use any of these
4 records. She always goes back to the shelf test, which
5 we, you know, talked about how many -- the errors or the
6 inappropriateness, as every party agreed. Even opposing
7 agree that it's not appropriate.

8 I want to just -- these schedules I have
9 mentioned here are -- sort of give you an insight as to
10 how this audit went and the progress and what was -- you
11 know, what was done and everything, what's happened.

12 If we look at the -- when we appealed to the
13 appeals office, you know, they sided with the State in
14 saying and they quoted so many different cases and so
15 many different manuals and we responded in my booklet
16 here saying that, you know, these aren't relevant. I
17 mean, she mentioned certain things such as, you know,
18 certain cases, the Riley case. She mentioned another
19 case, McGuinness, and what I want to stress is to all of
20 these things that she mentioned, and I could -- I have it
21 in one of the exhibits here. They had nothing to do with
22 my assertion, you know, my assertion, Can the taxpayer
23 falsify documents or can they -- when we have books and
24 records?

25 The McGuinness case and the other case, Riley --

1 I'll talk a little bit about the McGuinness case.

2 JUDGE WONG: I think you said, Can the taxpayer
3 falsify records? I think you mean --

4 MR. CARREGA: Change records.

5 JUDGE WONG: Do you mean CDTFA?

6 MR. CARREGA: Yes. That's --

7 JUDGE WONG: Not the taxpayer.

8 MR. CARREGA: That's my client. Yes.

9 JUDGE WONG: I just want to clarify that for the
10 record.

11 MR. CARREGA: Yes. That's correct.

12 And then she basically ignored my assertion and
13 just basically went with the State.

14 But one of the cases -- you know, there's
15 numerous cases and I have the report here, how I
16 responded to her opinion. There was numerous things of
17 how I responded and it's in my -- it's in the pamphlets
18 or the books you have. So I just wanted to have that
19 there for you so you can actually examine how the
20 response and also some of the cases that she referred to.

21 I mean, if we look at your last exhibits -- I'll
22 sort of skip a little bit here, and if we look at the
23 last two exhibits, she mentions the case Riley and also
24 the McGuinness, which I believe you would be very
25 familiar with. But one of the points I want to make is

1 that with McGuinness, the person did not have any books
2 and records and she's saying -- you know, kind of
3 referring to us that, Oh, well, you're like this
4 McGuinness case where there was no books and records, but
5 we have books and records and the books and records were
6 shown here.

7 JUDGE WONG: Mr. Carrega, I believe you're referring
8 to Maganini --

9 MR. CARREGA: Yes.

10 JUDGE WONG: -- versus Quinn --

11 MR. CARREGA: Yes.

12 JUDGE WONG: -- M-a-g-a-n-i-n-i --

13 MR. CARREGA: Yes.

14 JUDGE WONG: -- just for the record, Maganini --

15 MR. CARREGA: Yes.

16 JUDGE WONG: -- not McGuinness.

17 MR. CARREGA: Yes. And the main thing is the courts
18 decided that, you know, there was no records and so they
19 could use an alternative method of calculating the tax,
20 and that was the main thing of that case. And I'm saying
21 we have books and records. There's no relationship here.

22 Also, the business that she was referring to was
23 a bar. I don't know if that makes any difference. And,
24 you know, It was a different type of business. But the
25 main thing is we have books and records and we kept

1 saying that throughout this whole thing, "We have books
2 and records," "The books and records are here." And they
3 just used cases. Well, you know, it's cases that are not
4 pertinent to our assertion and so it looks pretty on
5 paper, Oh, yeah, well, you know, all these cases, we
6 haven't violated any of these things. We have books and
7 records. And I want to make that perfectly clear that
8 that's what we have.

9 If we go to -- there's a -- after all this was
10 done and after all we submitted, our paperwork, I hope
11 I -- it's okay to use names instead of referring to the
12 State, but the final thing here I want to say, Larry
13 Parker [sic], he -- after all these work papers, he
14 didn't use any of this stuff. Everything was like thrown
15 away. You know, everything that the field auditor,
16 everything that the -- you know, was not used. Not even
17 our books and records were used. And what Larry Parker
18 said and I think probably was the right thing is not to
19 use any of this stuff. So what Larry Parker did is just
20 used the national average for the gross for the shelf
21 test.

22 Everything that was done here, all the field
23 auditor, everything, all the -- everything we went was
24 not used for the tax. Our books and records were not
25 used and nothing was used for -- to calculate the tax.

1 JUDGE WONG: Sorry. Mr. Carrega, when you say "Larry
2 Parker," are you referring to Jason Parker or --

3 MR. CARREGA: I'm sorry. Probably.

4 JUDGE WONG: Okay.

5 MR. CARREGA: The gentleman over there to the left.

6 JUDGE WONG: Okay. That's Jason Parker.

7 MR. CARREGA: Jason. Sorry.

8 JUDGE WONG: Just for the record, That's Jason
9 Parker, not --

10 MR. CARREGA: Sorry, Mr. Parker.

11 JUDGE WONG: -- Larry Parker. You have about four
12 minutes. Please continue.

13 MR. CARREGA: So Mr. Jason Parker did not use
14 anything. He just used a national average and just said,
15 Okay, well, this is inappropriate or whatever his
16 conclusion was, but nothing was used. Our books and
17 records were not used.

18 So what he did was use the national average.
19 And I have in one of my schedules, which we don't need to
20 talk about, basically saying, Hey, there's nothing wrong
21 with the national average, but what's important is it's
22 not the proper tax. You know, national average would be
23 appropriate if there's perhaps maybe fraud involved or
24 perhaps if there are no records, then Mr. Parker would
25 have what we call in our profession "linkage" to say,

1 okay, he has proper cause to use the national average,
2 but we have books and records and we keep saying that,
3 but they keep ignoring our books and records and always
4 go back to the shelf test.

5 And then after the shelf test, well, that's all
6 thrown out. Everything was thrown out, whatever the
7 field auditor's done, and then just comes up with the
8 national average.

9 Well, by using a national average, that doesn't
10 help my client because my client is below the average;
11 but if you look at the books and records, they're there
12 and our tax should be what we owe, not what a national
13 average, you know, is done.

14 So I'm not going to conclude yet, but for this
15 portion, since I only have a few minutes, I just want to
16 stress some points again.

17 First of all, we have books and records.

18 Second of all, the books and records are
19 adequate. One of the things say, "Oh, well, we can't do
20 a shelf test." Well, there's a big difference between
21 single accounting versus double-entry accounting. When
22 you do single-entry accounting, you don't need a -- you
23 know, there's no balance sheet. You just use
24 single-entry accounting. And so when you're doing some
25 analysis, you know, it's different, as opposed to

1 double-entry accounting. You only list the sales and we
2 have all the sales.

3 The second point I want to make is we are here
4 and we are willing -- what we owe, we will pay. But
5 when, you know, the books and records, they're not using
6 them, they're just using a method, a national average,
7 it's not appropriate.

8 So I'll conclude with that for now until my
9 conclusion comes -- comes back. Thank you.

10 JUDGE WONG: Thank you, Mr. Carrega. You will have
11 time at the end for rebuttal and closing remarks.

12 MR. CARREGA: Uh-huh.

13 JUDGE WONG: Okay. Now I will turn to my
14 co-panelists to see if they have any questions for
15 Appellant's counsel -- Appellant's representative.
16 Sorry. Excuse me. Starting with Judge Aldrich.

17 JUDGE ALDRICH: Hi. This is Judge Aldrich. Welcome.

18 I just had a couple of questions.

19 So you made a point regarding the shelf test and
20 there was, I believe, six invoices used and you were
21 saying that they altered them; but when I was reading the
22 auditor's notes, it says that they weren't able to find
23 what the brand was and so they reduced I guess the
24 breadth of them by the size of the tire to try to narrow
25 it down to make it more accurate.

1 Are you saying that the CDTFA somehow changed
2 the invoice or removed the brand name, or what exactly
3 are you saying on the "altered"?

4 MR. CARREGA: I'm saying that they used -- they put
5 more in the invoice than what was there. So the invoice
6 said, you know, one tire, \$50. They said Bridgestone,
7 \$50. So they actually added to the invoice, altering the
8 actual invoice to substantiate their shelf test.

9 JUDGE ALDRICH: So are you saying they actually made
10 that change or that they made that assumption?

11 MR. CARREGA: No. They made that change because they
12 calculated saying that, okay, and it even says it in her
13 work paper that, Oh, I could not find this, so I
14 did this, so I used this brand to do my calculation with
15 these invoices.

16 JUDGE ALDRICH: And are there any examples of those
17 invoices?

18 MR. CARREGA: Yes. If we go to my Schedule 3 --

19 JUDGE ALDRICH: Do you happen to know what exhibit
20 that might be?

21 MR. CARREGA: It would be my 3. It possibly could be
22 yours. I'll tell you exactly in a second here. It would
23 be 12(a).

24 JUDGE ALDRICH: That's Schedule 12(a)?

25 MR. CARREGA: Yeah, her Schedule (a). Let me see.

1 It's on the comments. Yeah, Number 3 on my book, so
2 it now -- excuse me. It would be, yeah, 12(a), and I
3 have it highlighted as to the invoices.

4 JUDGE WONG: What's the title of that schedule?

5 MR. CARREGA: 12(a)-2.

6 JUDGE WONG: That's your Exhibit 2?

7 MR. CARREGA: Yeah. It's her schedule it's 12(a)-2.
8 It's estimated markup percentage based on auditor's
9 review of the purchase invoices, and then if we look here
10 on that schedule, she highlights here, However -- see
11 there's always this "however." "The sale invoice did not
12 reconcile the brand name, the brand name of the tire."
13 So she didn't -- she used, you know, did not --

14 JUDGE ALDRICH: Right, and that's quite distinct from
15 saying that the tire was actually a Bridgestone or a
16 Michelin; right? She's saying that the invoice didn't
17 have a brand name on it, and are you saying that the
18 invoices did have a brand name on them?

19 MR. CARREGA: I'm saying she used a brand that did
20 not -- that she added to the invoice by using a brand
21 that was not matching the invoice.

22 JUDGE ALDRICH: Okay. Are there any examples of
23 invoices that do --

24 MR. CARREGA: That she did the alteration?

25 JUDGE ALDRICH: -- demonstrate the brand?

1 MR. CARREGA: Yeah. It's this work paper here. She
2 just mentioned here that she used -- "However" -- yeah.
3 And she has comments here on the back. I highlighted
4 them where differences were noted, The taxpayer-recorded
5 taxables, they are not reported, no credit would be
6 granted, blah, blah, blah. But it's to the right and
7 where I have that highlighted. So that's where she
8 actually altered her gross profit, which in effect
9 altered the invoice to support her gross profit or shelf
10 test.

11 JUDGE ALDRICH: Okay. I think I understand your
12 position.

13 MR. CARREGA: Yes.

14 JUDGE ALDRICH: And --

15 MR. CARREGA: I'm saying she didn't actually go
16 physically alter the actual invoice. She actually -- she
17 did it on the computer to support her shelf test --

18 JUDGE ALDRICH: But --

19 MR. CARREGA: -- by saying there's a higher brand and
20 not matching it to the lower brand.

21 JUDGE ALDRICH: But there's also no invoices in the
22 evidence -- or will I find invoices in the evidence that
23 show the brand name?

24 MR. CARREGA: Maybe. We have the -- I mean, there's
25 quite a few invoices. You would find the size. You'll

1 find the size. You will find other elements of the
2 specific tire, yes.

3 JUDGE ALDRICH: Okay. And so part of your argument
4 is that the national average was used and I believe
5 that's found in CDTFA Exhibit D as an attachment to the
6 reaudit, but are there specific schedules that you want
7 us to look at that disprove that national average that
8 was used or that was --

9 MR. CARREGA: Well, yes.

10 JUDGE ALDRICH: -- would show that it should be
11 lower?

12 MR. CARREGA: Yes, absolutely. We can look at her
13 schedule, because she has a schedule that shows a
14 break-even and she's -- and she puts down -- it's a
15 schedule that I believe the California also shows that
16 shows like it's break even. Well, it shows negative, but
17 you would probably calculate break even if you take into
18 account other things like cash basis versus accrual
19 basis. It would give you a break-even. It shows you --
20 if you just look at it the way as the field auditor
21 presents it, it shows negative and they say, "Oh, it's
22 negative. It's impossible. You can't use it."

23 Well, wait a minute. You've got to -- you know,
24 this is an accrual accounting. This is cash basis. So
25 you might have some differences. You have to take into

1 account, you know, when the purchases were made and then
2 when the sales occurred, but the auditor did not do any
3 of that stuff.

4 JUDGE ALDRICH: Okay.

5 MR. CARREGA: They just showed the schedule.

6 JUDGE ALDRICH: So your position is that the schedule
7 showing the negative markup is an accurate reflection of
8 your client's records?

9 MR. CARREGA: Absolutely.

10 JUDGE ALDRICH: Okay.

11 MR. CARREGA: Yes. I'm showing that we have books
12 and records. This is -- that work paper needs more work,
13 if you -- it needs more work, but yes.

14 JUDGE ALDRICH: Okay. Thank you. At this time, I'm
15 going to refer it back to Judge Wong.

16 JUDGE WONG: Thank you.

17 I'll turn to Judge Katagihara for any questions
18 for Appellant's representative.

19 JUDGE KATAGIHARA: I do have one question.

20 So you're indicating that CDTFA assigned a
21 certain brand to these invoices that did not have brands
22 listed on them. How do you know or how does your client
23 know that Bridgestone, for example, was not the
24 appropriate brand for that invoice?

25 MR. CARREGA: Probably would have to go back at the,

1 you know, purchase, purchases, and look at the listing.
2 I mean, there would be work involved. They would know,
3 eventually.

4 JUDGE KATAGIHARA: Did you provide any evidence that
5 would show that the brands assigned were not correct?

6 MR. CARREGA: We provided -- yes, we did. We
7 provided purchase -- all the purchases.

8 JUDGE KATAGIHARA: Thank you.

9 JUDGE WONG: Thank you.

10 Let me just check my notes to see if I have any
11 questions for Appellant's representative.

12 So your client operated three locations; is that
13 correct?

14 MR. CARREGA: One location. This is the one location
15 here.

16 JUDGE WONG: Just one location?

17 MR. CARREGA: Here in Bellflower.

18 JUDGE WONG: Because in reviewing the record, it
19 seems like CDTFA was auditing three locations,
20 Bellflower, Wilmington and Lynwood. I know that there
21 was some disagreement as to the scope of the audit or
22 your representation and the record indicated you were
23 only hired to deal with one particular location, the
24 Bellflower location --

25 MR. CARREGA: Yes. Yes.

1 JUDGE WONG: -- but it seems like CDTFA was auditing
2 three locations. Why was -- what was the disconnect
3 there?

4 MR. CARREGA: I think they incorporated. I'm not
5 sure when that point was, but they incorporated. I think
6 at one time they were -- other management companies were
7 running that.

8 JUDGE WONG: I think in the record it said that the
9 date of incorporation was after --

10 MR. CARREGA: Okay.

11 JUDGE WONG: -- the period being audited, so I'm just
12 curious --

13 MR. CARREGA: Okay.

14 JUDGE WONG: -- of what -- why you think that only
15 one location is at issue here.

16 MR. CARREGA: Well, this is the -- this was their
17 conclusion based on this location. I mean, all the work
18 papers are from this location.

19 JUDGE WONG: Did your -- did your client provide
20 books and records for the other two locations?

21 MR. CARREGA: They weren't -- I believe the auditor
22 did not request those. We gave the auditor everything
23 they wanted.

24 JUDGE WONG: Okay. So did your client have separate
25 seller's permits for those other two locations or were

1 all these three locations under one seller's permit?

2 MR. CARREGA: That, I'm not -- I don't know as of
3 right now. I'd have to look. I don't know.

4 JUDGE WONG: Okay. Okay. Those are all the
5 questions I have for Appellant at this time.

6 We are going to turn it over to CDTFA for their
7 presentation. You have 20 minutes. Please proceed.

8 MR. SUAZO: Appellant is a sole proprietorship who
9 operated three tire stores during the audit period. The
10 Bellflower location operated for the entire audit period.
11 The Wilmington location was added April 1st, 2016. The
12 Lynwood location was added on July 1st, 2016.

13 The two-year audit period is from January 1st,
14 2015 through December 31st, 2016.

15 Records reviewed were federal income tax returns
16 for 2015 and 2016, bank statements, sales invoices for
17 the Bellflower location for the audit period, and first
18 quarter 2016 purchase invoices for the Bellflower
19 location. Sales and purchase invoices were not provided
20 for the Wilmington and Lynwood locations.

21 Reported gross sales of 538,000 include
22 deductions of, one, exempt labor for \$310,000 and, two,
23 sales tax included for 18,000. Taxable sales of 210,000
24 has been reported, Exhibit E, page 45.

25 Comparison of federal income tax returns to

1 total sales and use tax returns reported sales disclosed
2 no differences, Exhibit E, page 93.

3 Analysis of bank deposits revealed that not all
4 sales are deposited into the bank account, as reported
5 sales exceeded bank deposits by over \$200,000.
6 Exhibit E, page 65.

7 Reported taxable sales were compared to costs of
8 goods sold, per the federal income tax returns. Markups
9 of negative 37.98 percent for 2015 and negative
10 42.54 percent for 2016 were computed and overall,
11 negative 40.07 percent markup for the two years was
12 revealed, Exhibit E, page 92.

13 Sales invoices for the Bellflower location were
14 transcribed for the entire audit period. Taxable sales
15 invoices totaled \$237,000. Reported taxable sales for
16 this location were only \$162,000. The report -- the
17 recorded to reported difference of 85,000 was assessed,
18 Exhibit E, page 54. Appellant did not provide sales
19 invoices for the other locations.

20 It should be noted that the exempt labor in the
21 transcribed sales invoice amounts totaled only \$31,000,
22 yet the Appellant claims \$310,000 of exempt labor on the
23 sales and use tax returns for the audit period.
24 The difference computes to almost \$280,000, Exhibit E,
25 page 64.

1 Due to the, one, negative markups; two,
2 differences between recorded taxable sales and taxable
3 sales invoices; three, discrepancies and reported exempt
4 labor to exempt labor totals per sales invoices; and
5 four, no invoices being provided for the Wilmington and
6 Lynwood locations, the Department used an alternative
7 method to determine taxable sales.

8 A shelf test was conducted using sales invoices
9 from the first and second quarters of 2016 and purchase
10 invoices for the first quarter of 2016. Sales invoices
11 were reviewed -- excuse me. Sales invoices reviewed were
12 handwritten and did not have essential data such as brand
13 name and tire rating. Only the tire size was available
14 to try and match the purchase invoices.

15 Due to the lack of information, only six
16 invoices could be matched to the applicable purchase
17 invoices. The shelf test showed a 90.55 percent markup
18 on tires, Exhibit E, page 52.

19 The 90.55 percent markup factor was applied to
20 cost of goods sold and initial audit sales computed to
21 over \$665,000, Exhibit E, page 51.

22 When compared to reported taxable sales of
23 210,000 and, two, the recorded to reported difference
24 also assessed of 85,000, unreported taxable sales per
25 markup method of over \$372,000 was determined, Exhibit E,

1 page 50.

2 The audit was submitted with a total additional
3 measure in excess of \$450,000, Exhibit E, page 34,
4 and a notice of determination was issued for the
5 applicable tax, Exhibit C, pages 15 and 16.

6 In preparation for the Office of Tax Appeals
7 hearing process, an analysis of the audit was conducted.
8 Included in the analysis was a review of the tire
9 industry website csimarket.com. Csimarket.com revealed
10 industry average gross margin on sales of tires of 25.9
11 percent and 25.85 percent for 2015 and 2016, which is
12 equivalent to a markup of 34.95 percent for 2015 and
13 34.86 percent for 2016, Exhibit D, page 29.

14 The Department considered it more reasonable in
15 this case to use the industry average markup to apply to
16 the Appellant's cost of goods sold. The Department
17 applied the third-party industry average markup of 34.9
18 percent to the cost of goods sold, Exhibit D, page 27.

19 As a result, total are unreported tax sales
20 calculated to 262,000, which is a combination of 177,000
21 from the markup plus the 85,000 reported to recorded
22 difference, Exhibit D, page 26.

23 As stated earlier, Appellant has claimed
24 nontaxable labor of \$310,000. Records support roughly
25 31,000 for the audit period, based on the compilation of

1 sales invoices. If these unsupported exemptions were
2 disallowed, they would amount to \$279,000. This further
3 supports the Department's assessment of unreported
4 taxable sales.

5 In regards to the penalty, an alternative method
6 was used to compute the audited taxable sales.
7 Percentage of error is over 100 percent. In essence,
8 only half of the taxable sales have been recorded.
9 Records were incomplete, as the other two locations were
10 not provided. There was a negative markup that the
11 taxpayer should have known, that they were reporting not
12 the correct amount of taxable sales.

13 In addition, Appellant has made baseless
14 accusations of fraud and impropriety against the
15 Department employees working on this case during the
16 audit and appeals process. Appellant has made these
17 accusations against the auditor, the audit supervisor,
18 the appeals conference holder, and the chief of
19 headquarters operations. These claims are unsupported
20 and absolutely false. They provide no basis for
21 adjustments to liability.

22 The Appellant has not provided documentation
23 that supports any further changes to the audit findings;
24 therefore, the Department requests that the Appellant's
25 appeal be denied.

1 This concludes my presentation. I'm available
2 to answer any questions you may have.

3 JUDGE WONG: Thank you, Mr. Suazo.

4 I will now turn to my co-panelists for any
5 questions for CDTFA, starting with Judge Aldrich.

6 JUDGE ALDRICH: Sorry. I'm getting a little bit of a
7 feedback.

8 Okay. Hi. Yes. This question is for CDTFA.

9 So first I wanted to know the error ratio that
10 you were referencing at the end, is that after the
11 reaudit or is that the error ratio established in the
12 initial audit?

13 MR. SUAZO: That's after the reaudit. It is on
14 page -- on Exhibit D, page 27.

15 JUDGE ALDRICH: Thank you.

16 MR. SUAZO: We have a 115 percentage of error in
17 2015, 2016 is 132, and the overall for the two years is
18 125.

19 JUDGE ALDRICH: Okay. And so with respect to the
20 cost of goods sold, could you tell me how that number was
21 calculated?

22 MR. SUAZO: Using the Appellant's federal income tax
23 returns.

24 JUDGE ALDRICH: So what they reported on their FITRs?

25 MR. SUAZO: I believe so. It's also on Exhibit D,

1 page 27.

2 JUDGE ALDRICH: And then with respect to the
3 Exhibit 2 to Appellant's -- attached to exhibit -- or in
4 Exhibit D, so attached to the reaudit, the CSI exhibit,
5 could you tell me, is that a source document from CSI or
6 is that some sort of schedule that the Department
7 prepared?

8 MR. SUAZO: When you're saying "source document,"
9 you're saying -- do you have a reference?

10 JUDGE ALDRICH: So Exhibit D.

11 MR. SUAZO: Okay.

12 JUDGE ALDRICH: And in Exhibit D --

13 MR. SUAZO: What page?

14 JUDGE ALDRICH: Yeah. One moment.

15 JUDGE WONG: 29.

16 MR. SUAZO: Okay. One moment.

17 Okay. I believe that is what we were able to
18 pull off of the CSI marketplace website and then we
19 computed the mark- -- the markup and the margin based on
20 the -- 'cause they would have had the 23 -- if you look
21 at the top ones where it says gross margin, gross margin
22 annual, I think that's what CSI provided, and then the
23 25.9 and the 34.95 -- are you following me?

24 JUDGE ALDRICH: Yeah.

25 MR. SUAZO: Okay. That would be what we got it.

1 JUDGE ALDRICH: Okay.

2 MR. SUAZO: So we averaged them for the whole year,
3 for each year, and then we recomputed it to show a
4 markup.

5 JUDGE ALDRICH: Okay. And those are the national
6 figures, but not necessarily like local or state figures?

7 MR. SUAZO: No, but if it's competitive, it's going
8 to be pretty much on the ballpark.

9 JUDGE ALDRICH: Okay.

10 MR. SUAZO: Okay.

11 JUDGE ALDRICH: Thank you for those clarifications.
12 I'm going to refer it back to Judge Wong.

13 JUDGE WONG: Thank you. Judge Katagihara, do you
14 have any questions for CDTFA?

15 JUDGE KATAGIHARA: No questions.

16 JUDGE WONG: Okay. I also do not have any questions
17 for CDTFA.

18 So we will turn it back to Appellant,
19 Mr. Carrega, for your rebuttal and closing remarks. You
20 have 10 minutes. I think you have a few minutes from
21 your previous presentation, so you have up to like 12
22 minutes.

23 MR. CARREGA: Oh, wow. Okay. I didn't know we had
24 carryovers.

25 JUDGE WONG: Also, if you could also address the

1 negligence penalty, that is also one of the issues.

2 That's issue number 2, whether your Appellant was
3 negligent --

4 MR. CARREGA: Okay.

5 JUDGE WONG: -- during your rebuttal and closing.

6 MR. CARREGA: Okay.

7 JUDGE WONG: Thank you.

8 MR. CARREGA: I'd like to first address the
9 negligence with you since it's on my mind.

10 This is the first time this client has been
11 audited, so I would say the negligence penalty should not
12 apply. This is the first time and, also, we don't agree
13 or we don't believe that what you're basing your tax on
14 is appropriate.

15 JUDGE WONG: Mr. Carrega, can you just address the
16 panel --

17 MR. CARREGA: Oh, I'm sorry. Okay.

18 JUDGE WONG: -- and not the representatives directly?
19 Thank you.

20 MR. CARREGA: We'll start with the negligence
21 penalty. It's the first time this client's been audited,
22 so there shouldn't be any negligence penalty, but also,
23 the tax isn't what they say it is. So if you take into
24 account a lower tax, then the penalty would be lower. So
25 we're saying, yeah, we don't agree with this negligence

1 penalty; first-time user, any penalty.

2 I'd like to also address the two points the
3 counsel mentioned about the other locations. If we look
4 throughout this whole process, never were they mentioned,
5 "We want to see these other locations." It was just this
6 location, from my understanding, and this was -- the
7 field auditor never asked me for -- or while this whole
8 process was going on. So the other locations. And
9 there's no work papers of the other locations, you know,
10 that they did or -- or present. So those are two things
11 I wanted to -- okay.

12 But I want to start off with my conclusion that
13 this whole thing is about the gross profit. That's what
14 it is. And every accusation they make, they just make
15 it, but they don't show any work papers or anything to
16 say, "Oh, well, this isn't appropriate." They show the
17 negative work paper, but they don't do more to show that,
18 hey, maybe this isn't correct.

19 When you look at the profit, everything was
20 99 percent, which we all agree that that was not
21 appropriate, everyone from start to finish that that is
22 not appropriate, and it definitely should be -- and it
23 was obvious by what Mr. Parker did. He didn't use it and
24 then he did a reaudit. Well, where are the work papers
25 of this reaudit? I mean, is that linkage to support his

1 national average?

2 As we keep saying, the books and records we
3 have. You have them. You're looking at them. We
4 presented them. They made copies, you know, and they're
5 trying to make an argument that the books and records
6 weren't supplied. They were supplied and they have them
7 to do.

8 So this is all about this gross profit. That's
9 all it is and they're just using the national average
10 when in reality they should not. The books and records
11 are here and available.

12 So that's my conclusion.

13 JUDGE WONG: Thank you, Mr. Carrega.

14 Okay. So for the final time, I'll turn to my
15 co-panelists to see if they have any final questions for
16 either Appellant or CDTFA, starting with Judge Aldrich.

17 JUDGE ALDRICH: No questions. Thank you.

18 JUDGE WONG: Judge Katagihara?

19 JUDGE KATAGIHARA: No questions. Thank you.

20 JUDGE WONG: Okay. Excuse me. I do have one
21 question for Mr. Carrega.

22 You had mentioned that it was only Bellflower
23 that was being audited or there was some disagreement,
24 because I'm looking at the audit working papers. This
25 is -- let me find the exact -- okay.

1 So this is page 99 of Exhibit -- I believe it's
2 Exhibit E. All right. Let me just pull this up.

3 This is CDTFA's records and it looks like -- it
4 looks like activity log, kind of keeping track of what's
5 going on in the audit, and it just records an exchange
6 between yourself and the auditor talking about the scope
7 of the audit.

8 Let me see if I can pull it up. This is for the
9 entry dated -- sorry. I'm having trouble with this. Oh,
10 it's August 27th, 2018. It's a note for the audit and
11 it's referring to you. It says:

12 "Mr. Carrega also said that he was
13 hired only for the Bellflower location and
14 that the records for the Wilmington and
15 Lynwood locations are other businesses and
16 that each business is separate and has its
17 own management team and records at each
18 location."

19 So it seems to be implying that they asked you
20 for the records for the Wilmington and Lynwood locations.

21 "He," referring to yourself, "said that
22 the Bellflower State I.D. number has always
23 been used for Bellflower and that if other
24 businesses have used Bellflower's I.D. that
25 it was from direction of the State Board of

1 Equalization," which was what CDTFA was part
2 of at the time, "not the Bellflower
3 business. He," referring to yourself, "said
4 that, 'If auditor wishes to audit the other
5 businesses, to issue a Demand Letter for the
6 place of business.' Explained to
7 Mr. Carrega" -- I think this is the auditor
8 speaking -- "that the permit being audited
9 has the sublocations, referring to
10 Wilmington and Lynwood, and that the letter
11 that was sent was sent to the mailing
12 address on file, which is the Bellflower
13 location, but that the audit is for all
14 sublocations under that permit."

15 So it seems from the record that the scope of
16 audit was for all three locations and they had some
17 communication with you about that and you had a different
18 take on that.

19 MR. CARREGA: Okay.

20 JUDGE WONG: I mean so it seems like they did ask for
21 records for all three locations.

22 MR. CARREGA: They didn't issue a Demand Letter to
23 that location, I don't believe.

24 JUDGE WONG: But if all the three locations were
25 under the same permit, wouldn't it -- and they're

1 auditing that business, wouldn't that include all three
2 locations?

3 MR. CARREGA: Possibly, yes. But, I mean, where are
4 they when -- this whole process? They never -- never
5 pursued that.

6 JUDGE WONG: Okay. I have no further questions.

7 This concludes the hearing. The record is
8 closed and the case is submitted today.

9 The judges will meet and decide the case based
10 on the exhibits presented and admitted as evidence. We
11 will send both parties our written decision no later than
12 100 days from today.

13 I want to thank both parties for their time and
14 presentations.

15 This oral hearing is now adjourned and we are
16 breaking until 1:00 for the next hearing. Thank you.

17 Let's go off the record, please.

18 (Proceedings adjourned at 10:32 a.m.)
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1 REPORTER'S CERTIFICATION

2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

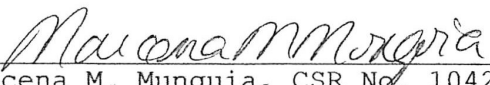
5 That the foregoing proceedings were taken before
6 me at the time and place herein set forth; that any
7 witnesses in the foregoing proceedings, prior to
8 testifying, were duly sworn; that a record of the
9 proceedings was made by me using machine shorthand, which
10 was thereafter transcribed under my direction; that the
11 foregoing transcript is a true record of the testimony
12 given.

13 Further, that if the foregoing pertains to the
14 original transcript of a deposition in a federal case,
15 before completion of the proceedings, review of the
16 transcript was not requested.

17 I further certify I am neither financially
18 interested in the action nor a relative or employee of any
19 attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date subscribed
21 my name.

22 Dated: March 27, 2023

23 
24 Marcena M. Munguia, CSR No. 10420
25 Certified Shorthand Reporter
For The State Of California

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\$2 10:22	132 38:17	31,000 36:25	70 8:2,8
\$200,000 34:5	15 2:19 5:1 8:8 36:5	31st 33:14	<hr/>
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\$372,000 35:25	<hr/>	37.98 34:9	<hr/>
\$450,000 36:3	2	<hr/>	9 14:21 15:12,13, 14,21 16:23
\$50 26:6,7	2 9:17 10:7,8,10, 11,12,14 27:6 39:3 41:2	4	90 11:5
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1-20 4:4	25 8:3,22	5 13:24	A
10 8:6 10:19 18:8, 17 40:20	25.85 36:11	50 12:8 36:1	A-F 4:5
10(1)(Q) 15:17	25.9 36:10 39:23	51 35:21	a.m. 2:17,18 5:2,8
100 13:12,22 37:7	26 36:22	52 35:18	absolutely 29:12 30:9 37:20
10420 2:20	262,000 36:20	538,000 33:21	account 17:25 29:18 30:1 34:4 41:24
10:32 2:18	27 36:18 38:14 39:1	54 34:18	accounting 24:21,22,24 25:1 29:24
115 38:16	29 36:13 39:15	<hr/>	accrual 17:22 29:18,24
12 18:17 40:21		6	accurate 25:25
12(a) 26:23,24 27:2		6 13:24	
12(a)-2 27:5,7		64 34:25	
12(e) 15:16 16:24 17:13		65 34:6	

30:7
accusation 42:14
accusations
37:14,17
actual 10:5 26:8
28:16
added 26:7 27:20
33:11,12
addition 37:13
additional 36:2
address 17:21
40:25 41:8,15
42:2
adequate 24:19
adjourning 2:18
adjustments
37:21
**ADMINISTRATIO
N** 3:10
Administrative
5:11 7:16,18
admitted 7:5,14
agency 6:1
agree 19:7 41:12,
25 42:20
agreed 13:13 19:6
Aldrich 3:5 5:13
8:16,18 25:16,17
26:9,16,19,24
27:14,22,25
28:11,14,18,21
29:3,10 30:4,6,10,
14 38:5,6,15,19,
24 39:2,10,12,14,
24 40:1,5,9,11
ALJ 3:3,5 8:6
alter 28:16
alteration 27:24
altered 12:2,15,25
13:9 25:21 26:3
28:8,9

altering 14:4 26:7
alternative 21:19
35:6 37:5
amount 6:10
37:2,12
amounts 34:21
analysis 24:25
34:3 36:7,8
Andrew 3:3 5:11
annual 39:22
anticipated 8:1
apologize 17:10
appeal 2:5 5:6
37:25
appealed 19:12
appeals 2:1 5:7
19:13 36:6 37:16,
18
APPEARANCES
3:1
Appellant 2:7 3:7
5:15 6:12,19,20
8:4 33:5,8 34:18,
22 36:23 37:13,
16,22 40:18 41:2
appellant's 4:4
7:4,15 8:3,10
10:13 25:15 30:18
31:11 36:16 37:24
38:22 39:3
applicable 35:16
36:5
applied 35:19
36:17
apply 36:15 41:12
approximately
8:2
April 33:11
argument 15:10
29:3
assertion 19:22
20:12 22:4

assessed 34:17
35:24
assessment 37:3
assigned 30:20
31:5
assuming 16:11
assumption
26:10
attached 39:3,4
attachment 29:5
attacks 10:25
audit 9:15,25
19:10 31:21 33:9,
10,13,17 34:14,23
35:20 36:2,7,25
37:16,17,23 38:12
audited 32:11
37:6 41:11,21
auditing 31:19
32:1
auditor 11:19,23
12:10,20 14:2,7
16:19 17:17 18:2,
22 19:1 22:15,23
29:20 30:2 32:21,
22 37:17 42:7
auditor's 11:18
24:7 25:22 27:8
average 22:20
23:14,18,21,22
24:1,8,9,10,13
25:6 29:4,7 36:10,
15,17
averaged 40:2

B

back 17:10,20
18:5 19:4 24:4
25:9 28:3 30:15,
25 40:12,18
balance 24:23
balancing 14:10

ballpark 40:8
bank 14:14 33:16
34:3,4,5
bar 21:23
based 10:24,25
15:17 17:7,11
27:8 32:17 36:25
39:19
baseless 37:13
basically 9:25
10:19 11:9 12:22
13:19,21 14:8
20:12,13 23:20
basing 41:13
basis 12:24 17:22
29:18,19,24 37:20
Bellflower 9:1
15:18 31:17,20,24
33:10,17,18 34:13
big 24:20
bit 8:25 11:6 15:2
16:14 17:4 20:1,
22 38:6
blah 28:6
book 14:23 18:9
27:1
booklet 19:15
books 18:23,24
19:23 20:18 21:1,
4,5,21,25 22:1,2,
6,17,24 23:16
24:2,3,11,17,18
25:5 30:11 32:20
brand 25:23 26:2,
14 27:12,17,18,
19,20,25 28:19,
20,23 30:21,24
35:12
brands 30:21
31:5
breadth 25:24
break 29:16,17
break-even 17:18

29:14,19

Bridgestone

26:6 27:15 30:23

bulk 9:4

Bureau 6:5

business 8:25

9:1,4 21:22,24

button 5:19

buy 10:16,17

C

calculate 10:23

22:25 29:17

calculated 26:12

36:20 38:21

calculating 21:19

calculation 14:23

15:17 18:9,10,13
26:14

California 2:2,17,

21 5:1,10 29:15

call 10:24 23:25

Carrega 3:7 4:12,

16 5:17,20,22,23,
24 6:13,14,22,24

7:10,12,20,22

8:11,13,21,23

10:5,7,10,12,15

14:16,19,25 15:7,

11,16,21 16:1,4,9,

12,15,18,21,23

17:2,7,10,13 20:4,

6,8,11 21:7,9,11,

13,15,17 23:1,3,5,

7,10,13 25:10,12

26:4,11,18,21,25

27:5,7,19,24 28:1,

13,15,19,24 29:9,

12 30:5,9,11,25

31:6,14,17,25

32:4,10,13,16,21

33:2 40:19,23

41:4,6,8,15,17,20

carryovers 40:24

cars 14:9

Cary 3:12 6:6

case 5:7,14 19:18,

19,25 20:1,23

21:4,20 36:15

37:15

cases 19:14,18

20:14,15,20 22:3,

5

cash 17:22 29:18,

24

CDTFA 6:1,5,16,

25 7:6,8,23 8:4,14

20:5 26:1 29:5

30:20 31:19 32:1

33:6 38:5,8 40:14,

17

CDTFA's 6:6 7:13

Cerritos 2:16 5:1,

9

Certified 2:20

change 20:4

26:10,11

changed 26:1

check 31:10

chief 6:4 37:18

claim 11:5

claimed 36:23

claiming 14:13

17:15

claims 17:14

34:22 37:19

clarifications

40:11

clarify 20:9

clear 22:7

client 10:2,3

18:19 20:8 24:10

30:22 31:12

32:19,24 41:10

client's 30:8

41:21

close 9:8

closing 4:15 8:5

25:11 40:19 41:5

co-panelists

25:14 38:4

combination

36:20

commencing

2:17

comments 27:1

28:3

companies 32:6

company 17:22

compare 12:3

compared 34:7

35:22

Comparison

33:25

competitive 9:7

40:7

compilation

36:25

comprised 11:2

compute 37:6

computed 34:10

35:20 39:19

computer 28:17

computes 34:24

concerns 12:1

conclude 24:14

25:8

concludes 38:1

conclusion 19:3

23:16 25:9 32:17

42:12

conducted 35:8

36:7

conference

37:18

considered

36:14

continue 23:12

copies 11:22

copy 9:22 13:18

correct 6:13,14,

16,18,23,24 7:8,9,

21,22,24,25 13:14

15:15 20:11 31:5,

13 37:12 42:18

correspond 15:4

cost 9:8 10:20

11:10 12:14 18:14

35:20 36:16,18

38:20

costs 10:17 34:7

counsel 3:12

25:15 42:3

couple 25:18

courts 21:17

create 12:4 13:4,9

credit 28:5

CSI 39:4,5,18,22

Csimarket.com

36:9

csimarket.com.

36:9

CSR 2:20

curious 32:12

D

data 35:12

date 32:9

deal 31:23

December 33:14

decided 12:10,20

21:18

deciding 5:13

deductions

33:22

demonstrate

27:25
denied 37:25
Department 3:9
 35:6 36:14,16
 37:15,24 39:6
Department's
 37:3
depending 12:9
deposited 34:4
deposits 34:3,5
determination
 36:4
determine 11:12,
 13 35:7
determined
 35:25
developed 11:12
difference 10:19
 11:9 12:20 13:17,
 20 17:3,23 21:23
 24:20 34:17,24
 35:23 36:22
differences
 13:21 28:4 29:25
 34:2 35:2
difficult 9:23 17:4
directly 41:18
disagreement
 31:21
disallowed 37:2
disclosed 34:1
disconnect 32:2
discrepancies
 35:3
disprove 29:7
distinct 27:14
disturbing 9:15
Division 6:7
document 14:17
 39:5,8

documentation
 37:22
documents 16:7
 19:23
dollar 10:17
double-entry
 24:21 25:1
Drive 2:16
DTFA 6:3
Due 35:1,15

E

earlier 36:23
easier 15:9
effect 12:15 28:8
elements 11:11
 29:1
employees 37:15
end 25:11 38:10
entire 33:10 34:14
equivalent 36:12
error 37:7 38:9,
 11,16
errors 19:5
essence 37:7
essential 35:12
established
 38:11
estimated 27:8
eventually 31:3
everything's
 17:11
evidence 6:21
 7:5,7,14,16,18
 28:22 31:4
examine 18:22
 19:2 20:19
examined 13:25
 18:24,25

examples 26:16
 27:22
exceeded 34:5
excess 36:3
excuse 25:16
 27:2 35:11
exempt 33:22
 34:20,22 35:3,4
exemptions 37:1
exhibit 10:10,11,
 13 14:17,21,22
 15:4,12,14,20
 18:16 26:19 27:6
 29:5 33:24 34:2,6,
 12,18,24 35:18,
 21,25 36:3,5,13,
 18,22 38:14,25
 39:3,4,10,12
exhibits 4:4,5
 6:20,21,22 7:1,4,
 6,7,11,13,15,17
 10:9 14:16 15:9,
 25 16:8,10,17
 17:1,2 19:21
 20:21,23

F

factor 35:19
fair 15:22
false 37:20
falsify 19:23 20:3
familiar 20:25
federal 15:15
 33:15,25 34:8
 38:22
FEE 3:10
feedback 38:7
field 11:19 12:10,
 20 14:2 18:2
 22:15,22 24:7
 29:20 42:7
figures 40:6

final 8:5 22:12
find 10:4 13:2
 25:22 26:13
 28:22,25 29:1
findings 37:23
fine 16:20
finish 42:21
first-time 42:1
FITRS 38:24
fix 9:2
fixing 9:5
found 9:15 29:5
fraud 23:23 37:14
front 9:13

G

gave 11:19 32:22
generated 11:9
generating 10:1
gentleman 23:5
give 10:16 19:9
 29:19
Goodrich 12:8
goods 18:14 34:8
 35:20 36:16,18
 38:20
granted 28:6
great 12:20
gross 10:25 12:4
 13:4,10,22 14:13
 18:6,15 22:20
 28:8,9 33:21
 36:10 39:21 42:13
guess 15:21
 25:23

H

half 37:8

hand-picked
13:8

handwritten
35:12

happen 26:19

happened 19:11

hard 9:22 15:2,5
16:7,14

headquarters
6:4 37:19

hear 5:19

hearing 3:11,14
5:9,13 6:2 8:2
36:7

hey 18:20 23:20
42:18

high 13:4,9

high-priced
12:12

high-quality
12:18

higher 10:21,23
12:4 14:13 28:19

highlighted 27:3
28:3,7

highlights 27:10

hired 31:23

hit 9:18,19 10:12

holder 37:18

holding 5:9

hope 22:10

Huxsoll 3:12 6:6

I

identified 6:19,20
7:6

identify 5:16 6:1

ignoring 24:3

import 12:19

important 11:3,
11 23:21

impossible 29:22

impropriety
37:14

inappropriate
23:15

**inappropriatene
ss** 19:6

include 33:21

included 14:6
33:23 36:8

income 15:15
33:15,25 34:8
38:22

incomplete 37:9

incorporated
32:4,5

incorporation
32:9

indicating 30:20

Individuals 5:15,
25

industry 9:7 36:9,
10,15,17

information
35:15

initial 35:20 38:12

insight 19:9

installation 9:9

installations 9:3

intensed 9:10

introductions
8:7

inventory 18:1

invoice 12:4,11,
16 13:1 26:2,5,7,8
27:11,16,20,21
28:9,16 30:24
34:21

invoices 11:20,25

12:2,6 13:6,9,25
14:1,3,6 25:20
26:15,17 27:3,9,
18,23 28:21,22,25
30:21 33:16,18,19
34:13,15,19 35:3,
4,5,8,10,11,14,16,
17 37:1

involved 23:23
31:2

issue 6:10,11
32:15 41:2

issued 36:4

issues 6:9,17
41:1

J

January 33:13

Jason 3:13 6:4
23:2,6,7,8,13

Josh 5:12

JOSHUA 3:5

Judge 5:5,11,18,
21,24 6:8,15,19,
25 7:3,10,13,16,
18,19,23 8:1,14,
16,18,19,20,21
10:5,8,11,13
14:16,22 15:2,8,
14,20,24 16:2,6,
10,13,16,20,22,25
17:6,9,12 20:2,5,
7,9 21:7,10,12,14,
16 23:1,4,6,8,11
25:10,13,16,17
26:9,16,19,24
27:4,6,14,22,25
28:11,14,18,21
29:3,10 30:4,6,10,
14,15,16,17,19
31:4,8,9,16,18
32:1,8,11,14,19,
24 33:4 38:3,5,6,
15,19,24 39:2,10,
12,14,15,24 40:1,
5,9,11,12,13,15,
16,25 41:5,7,15,

18

Judges 5:12

July 33:12

K

Katagihara 3:5
5:12 8:19,20
30:17,19 31:4,8
40:13,15

keys 19:1

kind 21:2

L

labor 9:10 14:9
33:22 34:20,22
35:4 36:24

lack 35:15

Larry 22:12,17,19
23:1,11

Lauren 3:5 5:12

Law 5:11 7:16,18

lead 3:3 5:11

left 23:5

Legal 6:6

liability 37:21

linkage 23:25
42:25

list 25:1

listed 30:22

listing 31:1

local 40:6

located 9:1

location 15:19
31:14,16,23,24
32:15,17,18
33:10,11,12,17,19
34:13,16 42:6

locations 31:12,
19 32:2,20,25

33:1,20 34:19
35:6 37:9 42:3,5,
8,9
low 9:6
lower 28:20 29:11
41:24
Lynwood 31:20
33:12,20 35:6

M

M-A-G-A-N-I-N-I
21:12
made 11:21 25:19
26:9,10,11 30:1
37:13,16
Maganini 21:8,14
main 10:1 11:11
13:22 18:25
21:17,20,25
make 9:9 12:8
18:21 20:25 22:7
25:3,25 42:14
makes 21:23
making 10:25
11:4
management
32:6
manuals 19:15
MARCENA 2:19
March 2:19 5:1,8
margin 36:10
39:19,21
mark- 39:19
marketplace
39:18
markup 13:10
14:23 15:16 18:9,
10,13 27:8 30:7
34:11 35:17,19,25
36:12,15,17,21
37:10 39:19 40:4
markups 13:11

34:8 35:1
match 12:17,22
35:14
matched 35:16
matching 12:13
27:21 28:20
material 17:7
materials 17:6
Matter 2:5
McGuinness
19:19,25 20:1,24
21:1,4,16
measure 36:3
meeting 11:4
Members 3:5
mention 13:5
17:16
mentioned 19:9,
17,18,20 28:2
42:3,4
mentions 20:23
method 21:19
25:6 35:7,25 37:5
mic 5:18
Michelin 12:8,12,
18 27:16
mind 13:17 41:9
minute 29:23
minutes 8:2,3,4,
6,8,22 23:12
24:15 33:7 40:20,
22
missing 17:15
model 9:6,8
moment 39:14,16
money 9:9
move 11:8
MUNGUIA 2:19

N

name's 5:22
names 22:11
narrow 25:24
national 22:20
23:14,18,21,22
24:1,8,9,12 25:6
29:4,7 40:5
necessarily
12:13 40:6
negative 29:16,
21,22 30:7 34:9,
11 35:1 37:10
42:17
negligence 41:1,
9,11,20,22,25
negligent 6:12
41:3
nontaxable 36:24
noted 28:4 34:20
notes 25:22 31:10
notice 36:4
number 5:7 9:17
10:6,10,11,12,14
11:24 15:13 16:19
18:17 27:1 38:20
41:2
numbers 9:20
numerous 20:15,
16

O

objections 7:1,2,
11
obvious 42:23
occurred 30:2
office 2:1 5:6
19:13 36:6
opening 5:5

operated 31:12
33:9,10
operations 6:5
37:19
opinion 20:16
opportunity 14:2
opposed 24:25
opposing 19:6
oral 8:1
OTA 2:6 5:7
outline 9:18,20
owe 24:12 25:4
owed 11:13
owes 10:3

P

pages 15:3,4 36:5
pamphlets 20:17
panel 3:3,5 5:13
41:16
paper 11:18 13:3,
18 22:5 26:13
28:1 30:12 42:17
papers 11:22
12:21 22:13 32:18
42:9,15,24
paperwork 22:10
Park 2:16
Parker 3:13 6:4
22:13,17,19 23:2,
6,9,10,11,13,24
42:23
part 29:3
party 19:6
patching 9:5,9
14:10
pay 25:4
penalty 37:5 41:1,
11,21,22,24 42:1

percent 10:19
11:5 13:12,23
34:9,10,11 35:17,
19 36:11,12,13,18
37:7 42:20

percentage
10:21,23 27:8
37:7 38:16

perfectly 22:7

period 11:21
32:11 33:9,10,13,
17 34:14,23 36:25

permit 33:1

permits 32:25

person 5:9 21:1

pertinent 22:4

physically 28:16

pick 12:1 13:7,8

picked 11:25 14:3

Plaza 2:16

point 25:3,19 32:5

points 18:21
20:25 24:16 42:2

portion 24:15

position 28:12
30:6

possibly 26:21

Powerpoint 9:18
15:3,4 16:3,4,6,
11,13 17:3,4,8,11

preparation 36:6

prepared 9:15
17:17 39:7

present 42:10

presentation
4:10 8:3,10,22
9:18 33:7 38:1
40:21

presented 9:21
13:1

presents 29:21

press 5:19

pretty 22:4 40:8

previous 40:21

price 9:6 11:10
12:13,19

pricing 9:8

proceed 8:10,21
11:16 33:7

proceeding 8:12

PROCEEDINGS
2:15

process 36:7
37:16 42:4,8

prod- 12:22

product 10:4
12:13

profession 23:25

profit 10:25 12:4
13:4,22 18:6,15
28:8,9 42:13,19

progress 19:10

proper 12:14
23:22 24:1

properly 17:24

proposed 6:21
7:1,6,11 10:2

proprietorship
33:8

provide 31:4
32:19 34:18 37:20

provided 15:5,9,
18,24 16:2,8,10
31:6,7 33:19 35:5
37:10,22 39:22

pull 39:18

purchase 15:18
27:9 31:1,7 33:18,
19 35:9,14,16

purchases 17:14,
15 30:1 31:1,7

purpose 14:1

push 5:21

put 14:25 26:4

puts 29:14

putting 14:9

Q

quarter 33:18
35:10

quarters 18:19
35:9

question 30:19
38:8

questions 8:7,11,
14,15,16,18,20
25:14,18 30:17
31:11 33:5 38:2,5
40:14,15,16

Quinn 21:10

quoted 19:14

R

Randy 3:10 6:2

rating 35:13

ratio 38:9,11

Raul 3:7 5:17,20,
23

read 9:23 15:8,10
16:7,14 17:5

reading 25:21

reason 13:2

reasonable 36:14

reaudit 29:6
38:11,13 39:4
42:24,25

rebuttal 8:5 25:11
40:19 41:5

received 4:4,5
7:15,17 18:18

recomputed 40:3

reconcile 27:12

record 5:5 7:5,14
13:1 20:10 21:14
23:8 31:18,22
32:8

recorded 15:17
34:17 35:2,23
36:21 37:8

records 11:20
18:20,23,25 19:2,
3,4,24 20:3,4
21:2,4,5,18,21,25
22:2,7,17,24
23:17,24 24:2,3,
11,17,18 25:5
30:8,12 32:20
33:15 36:24 37:9

reduced 6:11
25:23

refer 15:8 16:7
30:15 40:12

reference 16:17,
18 39:9

references 15:3

referencing
38:10

referred 20:20

referring 10:6
14:17,19,20,21
16:5 21:3,7,22
22:11 23:2

reflection 30:7

related 9:4

relationship
21:21

relevant 19:16

remarks 8:6
25:11 40:19

removed 26:2

replicated 16:11

report 20:15
34:16

reportable 18:15

reported 2:19
18:18,20 28:5
33:21,24 34:1,4,7,
15,17 35:3,22,23
36:21 38:24

Reporter 2:20

reporting 37:11

representation
31:22

representative
3:11,14 6:2 25:15
30:18 31:11

representatives
41:18

representing
5:15,25

request 32:22

requested 11:21

requests 37:24

respect 38:19
39:2

responded 19:15
20:16,17

Respondent 3:9
5:25

respondent's 4:5
7:17

response 20:20

result 36:19

returns 15:15
33:15,25 34:1,8,
23 38:23

revealed 34:3,12
36:9

review 27:9 36:8

reviewed 33:15
35:11

reviewing 31:18

Riley 19:18,25
20:23

road 13:13

Rolling 8:25

roughly 36:24

running 32:7

S

sale 27:11

sales 6:10 11:10,
20,25 13:25 14:3,
5,13 15:18 18:15
25:1,2 30:2 33:16,
19,21,23 34:1,4,5,
7,13,14,15,18,21,
23 35:2,3,4,7,8,
10,11,20,22,24
36:10,19 37:1,4,6,
8,12

sampling 13:6

schedule 9:16
10:6,7,8 11:16,17
13:16,19,20,24
14:1,8,12,23
15:14 18:7,12
26:18,24,25 27:4,
7,10 29:13,15
30:5,6 39:6

schedules 9:14,
21 17:16,19,21
18:22,24 19:8
23:19 29:6

scope 31:21

sell 9:2,6 10:18,
20,22 12:10

seller's 32:25
33:1

selling 9:2

separate 32:24

sheet 24:23

shelf 9:25 10:3,
15,22,24 11:1,2,4,
5,6,8,12,14,19
12:5 17:20,24
18:5 19:4 22:20
24:4,5,20 25:19
26:8 28:9,17 35:8,
17

Shorthand 2:20

show 12:6 13:24
14:1 18:10,24
19:1 28:23 29:10
31:5 40:3 42:15,
16,17

showed 30:5
35:17

showing 30:7,11

shown 14:14 21:6

shows 11:17
13:16 18:20
29:13,15,16,19,21

shrinkage 18:1

sic 22:13

sided 19:13

single 24:21

single-entry
24:22,24

size 12:7 25:24
28:25 29:1 35:13

skip 18:16 20:22

small 9:1 15:5

sold 18:14 34:8
35:20 36:16,18
38:20

sole 33:8

sort 10:25 13:16
19:9 20:22 39:6

sorts 14:10

source 39:5,8

speak 5:18 9:14

specific 29:2,6

start 8:24 9:12,16,
24 41:20 42:12,21

starting 25:16
38:5

state 2:2,21 10:3
19:13 20:13 22:12
40:6

stated 36:23

statement 4:15
6:16

statements 33:16

statistical 13:5

stems 14:10

stores 33:9

stress 19:19
24:16

stuff 22:14,19
30:3

Suazo 3:10 4:13
6:2,18 7:2,9,25
8:15 33:8 38:3,13,
16,22,25 39:8,11,
13,16,25 40:2,7,
10

submitted 6:21
22:10 36:2

substantiate
26:8

Suite 2:16

supervisor 37:17

support 28:9,17
36:24 42:25

supports 37:3,23

T

takes 11:9

talk 8:24 11:6,14
13:15 20:1 23:20

talked 19:5

talking 14:22

talks 13:19 14:12
17:14 18:8,14,18

tax 2:1 3:9,12 5:7,
25 10:2,23 11:13
13:17,20,21 15:15
21:19 22:24,25
23:22 24:12
33:15,23,25 34:1,

8,23 36:5,6,19
38:22 41:13,23,24

taxable 6:10
14:22 15:17 18:9,
15 33:23 34:7,14,
15 35:2,7,22,24
37:4,6,8,12

taxables 28:5

taxpayer 5:15
19:22 20:2,7
37:11

**taxpayer-
recorded** 28:4

test 9:25 10:3,15,
22,24 11:1,2,4,5,
7,8,12,15,19 12:5
17:20,24 18:5
19:4 22:21 24:4,5,
20 25:19 26:8
28:10,17 35:8,17

testing 18:4

thing 9:11 10:1
13:22 21:17,20,25
22:1,12,18 42:13

things 9:3 13:3,15
14:11 17:16,21,25
18:2 19:17,20
20:16 22:6 24:19
29:18 42:10

third-party 36:17

thousand 13:6

thrown 22:14
24:6

time 5:8 15:2
25:11 30:14 32:6
33:5 41:10,12,21

timing 17:25

tire 9:1,4 10:16,17
12:3,7,12,16,17,
18,19,23 14:11
25:24 26:6 27:12,
15 29:2 33:9
35:13 36:8

tires 8:25 9:2,3,5,
6 14:9 35:18

36:10

title 27:4

today 5:7,12 6:9

top 39:21

total 34:1 36:2,19

totalled 34:15,21

totals 35:4

touch 12:3

track 15:10

tracking 15:3

transcribed
34:14,21

TRANSCRIPT
2:15

true 13:1

turn 25:13 30:17
33:6 38:4 40:18

two-year 33:13

type 12:23 21:24

U

Uh-huh 25:12

unacceptable
13:13

understand 15:7
28:11

understanding
11:15 42:6

unreported 6:10
35:24 36:19 37:3

unsupported
37:1,19

user 42:1

V

valve 14:10

Ventura 2:6 5:6

versus 17:22
21:10 24:21 29:18

view 9:18,19,20

violated 22:6

W

wait 29:23

wanted 11:6,14
13:15,24 18:10
20:18 32:23 38:9
42:11

website 36:9
39:18

Wednesday 2:18
5:1,8

whatnot 8:7

Wilmington
31:20 33:11,20
35:5

witnesses 7:19,
20,23

Wong 3:3 5:5,11,
18,21,24 6:8,15,
19,25 7:3,10,13,
19,23 8:1,14,16,
19,21 10:5,8,11,
13 14:16,22 15:2,
8,14,20,24 16:2,6,
10,13,16,20,22,25
17:6,9,12 20:2,5,
7,9 21:7,10,12,14,
16 23:1,4,6,8,11
25:10,13 27:4,6
30:15,16 31:9,16,
18 32:1,8,11,14,
19,24 33:4 38:3
39:15 40:12,13,
16,25 41:5,7,15,
18

word 8:5

work 11:18,22
12:21 13:3 14:10
19:1 22:13 26:13
28:1 30:12,13
31:2 32:17 42:9,
15,17,24

working 37:15

works 10:3,15
11:16

wow 40:23

wrong 23:20

Y

year 40:2,3

years 34:11 38:17

Z

zoom 14:25 15:13